that delivery was necessary to constitute a certification; but he thought that to require an express allegation of delivery would be "too narrow" a construction of the indictment. It has generally been supposed that an indictment is bad if capable of a meaning which does not charge a crime, and that the courts will be astute to find it capable of such meaning. "Nothing shall be intended against a defendant." *United States* v. *Carll*, 105 U. S. 611; *Com.* v. *Grey*, 2 Gray, 501; *Com.* v. *Newburyport Bridge*, 9 Pick. 142; *State* v. *Brown*, 3 Murphy (N. C.), 224. As the counsel for the defence contended, everything in this indictment would be true if Potter had written on the check the words of certification, and then thrown it into the fire, instead of delivering it or causing it to be delivered. This would have been a conversion of the check, but it would not have been a certification, if the court was right in supposing delivery necessary.

Of the two points decided in the case, then, that on the indictment is against Mr. Potter, and that on the intent is the most desirable construction of an obscure statute, seldom enforced. The legal result, then, is not to be objected to.

---

A CARELESS ACCEPTOR. — The decision in *Scholfield* v. *Earl of Londesborough* (Court of Appeal, Dec. 19, 1894), 11 The Times Law Reports, 149, will not meet with universal assent. The facts of the case were, briefly, these: The defendant at the request of the drawer accepted a bill payable to the drawer's order for £500. The bill had been written by the drawer in such a way that space was left for inserting the figure "3" and the words "three thousand," and by so writing it the drawer was enabled subsequently to raise the amount of the bill to £3,500. Thereafter the drawer negotiated it to the plaintiff, a *bona fide* purchaser, for value without notice. The stamp was sufficient to cover the amount of the bill as raised. The court held, affirming the decision of Charles, J., 10 The Times Law Reports, 518, that the plaintiff could not recover. Charles, J., held that the facts did not show negligence on the part of the defendant. Lord Esher, who delivered an opinion with which Rigby, L. J., concurred, rested the decision of the Court of Appeal on the grounds that the defendant owed no duty to the plaintiff, and even assuming that he did, and that there had been a breach of the duty, the breach was not the cause of the plaintiff's loss, because a felonious act intervened. Lopes, L. J., delivered a vigorous dissenting opinion. Although the case may perhaps be distinguished from *Young* v. *Grote*, 4 Bing. 253, the distinction will make the earlier decision of very limited application; and, indeed, Lord Esher said of it, "That case ought not any longer to be quoted." 39 Sol. Law J. 164. In that case the opportunity for raising the check in question in the suit was afforded by a customer of the bank which paid it, and Lord Esher intimated that a customer might owe a duty to his banker, which an acceptor would not owe to the world at large. Whether Lord Esher would regard the position of the maker of a promissory note as analogous to that of an acceptor is not clear. It must be admitted that the reason for holding an acceptor, and especially an indorser, liable for the consequences of the improper form in which a bill or note is drawn or made is not so clear as the reason for holding the drawer or maker himself liable for such consequences. But the acceptor or indorser, though not in general empowered to add to or subtract from the face of a bill or note may certainly

draw a pen through spaces carelessly left in the body of the instrument. Further, the acceptor of a bill gives his acceptance on the faith of the drawer's credit, and as he would have the right to charge the drawer with the raised amount of a carelessly drawn bill, he should himself be liable to that extent to a *bona fide* purchaser. If it is a natural consequence of leaving blank spaces in a bill or note that the spaces will be fraudulently filled, it does not seem too much to say that any acceptor owes a duty to the public not to accept bills in that condition; and if the intervention of a felonious act is a natural consequence of so doing, it is hard to see how the fact that the act is felonious is important. If it were made a criminal offence for an agent to exceed his authority under specified circumstances, would that relieve the principal from all responsibility for the act, though within the apparent scope of the agent's authority?

---

SCOPE OF A DROVER'S PASS. — An interesting question is presented in *Gulf & C. & S. F. Ry.* v. *Cole*, 28 S. W. R. 391 (Texas), as to the liability of a railway when a connecting road refuses to honor a through drover's pass which has been issued as incident to a shipment of stock. By the contract of carriage in that case all liability for the stock ceased at the terminus of the first road, and the court held the liability on the "pass" to be not so limited. The Chief Justice maintains, in a vigorous dissenting opinion, that although by its terms the pass purported to carry the drover to the ultimate destination of the stock and return, yet it must be assimilated to the provisions of the main contract, which reduced the liability of the first carrier beyond its own terminus to that of a mere agent for the other roads. It would seem, however, that this view is founded upon a mistaken analogy. He argues that, in the case of baggage, the first carrier is not responsible for a loss not occurring on its own line; but there is the vital distinction between the two cases that there is no separate contract for the transportation of baggage. He also invoked the principle that *prima facie* a railroad is not a common carrier beyond its own line, and that in the transportation of goods something more than a mere through contract must be shown to hold it liable. Now while it is true that any notice printed on the back of a ticket, and referred to on its face, may be part of the contract (*Myrick* v. *M. C. Ry.*, 107 U. S. 102), and a drover's pass and the contract of carriage must in some ways be construed together (*Railway* v. *Curran*, 19 O. St. 1), yet in this case the drover's pass, which was on the back of the shipping contract, contained no limitation whatsoever. Liability for loss on the stock was carefully guarded against, but no reference was made to the drover beyond the promise to carry him to his destination on the connecting road. Under these circumstances, if the question had been as to holding the first company as carrier, and not as simple contractor, for an injury to the drover on the second road, a much more difficult case would have been presented, as the presumption would be against their having undertaken any such liability. *Harlan* v. *Ry.*, 114 Mass. 47; *Quimby* v. *Vanderbilt*, 17 N. Y. 306. But in the principal case the defendant had issued a pass for value, by which it contracted that the bearer should be carried on the connecting road. It follows that whether it be regarded as an agent, as in *Brooks* v. *Ry.*, 15 Mich. 332, or not, it is clearly liable when the pass is dishonored and the drover ejected from the train, as here. *Hudson* v. *Ry.*, 3 McCrary, 249.